

## **REMARKS**

The present Amendment is in response to the Office Action dated July 28, 2004 in reference to the above-identified application. The Examiner set a shortened statutory period for reply of three (3) months, making the present Amendment due by October 28, 2004.

In that Office Action, claims 1-34 were presented. Of these, applicant notes with appreciation the allowance of claims 17-27. Applicant also notes with appreciation the Examiner's indication that claims 8, 9, 12, 13, 29 and 30 contained allowable subject matter. Of the remaining claims, claims 1, 2, 6, 10, 11 and 14-16 were rejected as anticipated by U.S. Patent No. 3,038,064 to Gieb under 35 U.S.C. § 102(b). Claims 1-6, 10, 14, 15 and 32-34 were rejected as anticipated by U.S. Patent No. 3,671,175 to Campbell under 35 U.S.C. § 102(b). Claims 7, 28 and 31 were rejected as obvious over Campbell in view of U.S. Patent No. 6,488,025 to Cunningham under 35 U.S.C. § 103(a).

In addition, the Examiner noted a minor technical issue with respect to the drawings. Specifically, the Examiner observed that the reference numeral 626 did not appear in the figures.

Turning first to the objection to the drawings, Figure 4 has been amended to show reference numeral 626. A proposed replacement sheet reflecting this change is enclosed.

Next, Applicant has rewritten allowable claims 9 and 12 in independent form, respectively as new independent claims 35 and 36, and claims 9 and 12 have been canceled. Claim 35 recites that the upper portion of the diffuser element being configured to connect to the lid and attach it to the fire pan

when in the mounted state. Claim 36 recites that the fire pan includes a lower chamber portion and an upper pan portion having an upper pan rim. In rewriting claim 9 in independent form, Applicant noted a minor issue of antecedent basis in claim 7. Here, claim 7 recited "said main body". This recitation did not appear in claim 1. Therefore, in rewriting claim 9, this oversight has been corrected. Similarly, dependent claim 7 has been corrected in this regard. Based on the indication of allowability of claims 9 and 12, claims 35 and 36 should be allowable.

Independent claim 28 has been amended to incorporate allowable language from claim 29. Accordingly, claim 29 has been canceled. With this amendment, claim 28 should be in condition for allowance. The dependency of claim 30 has been changed to reflect this amendment.

Before discussing the changes to the claims presented by this amendment, it is perhaps helpful to review the teachings of the primary references relied upon in the Examiner's rejections. First, the patent to Gieb discloses a decorative torch. In Gieb, a bowl 10 is adapted to receive a volume of water. An upright pipe 20 extends upwardly from the bottom of the bowl and is connected, at its lower end to a gas inlet pipe 12. An upper end portion of pipe 20 is located in the interior of a housing 21 that a larger cylindrical sidewall 22 and a top wall 23. This housing is above the level of the water in the bowl (Figure 2) so that top wall 23 is above the rim of the bowl. Gas is directed from the top opening of pipe 20 toward the interior surface of top wall 23 which disperses the gas to outlet openings or orifices 26 formed in sidewall 22 of the housing. As pointed out in Gieb, the open end 25 of pipe 20 must be above the water level. Col.2, lines 43-51.

The patent to Campbell teaches a gas fireplace log burner. Here, a trough 10 has a gas inlet formed by a mandrel 20 having an upper gas outlet orifice 22 at its top. A gas distributor 24 is provided in the form of a hollow pipe that has a radially outwardly extending tube 26. Tube 26 is positioned over the mandrel 20 so that the orifice directs gas inside of the tube 26. The tube 26 then extend longitudinally of the trough. The gas impinges the interior surface of the distributor so that gas fills the tube. Downwardly directed apertures 30 then discharge gas downwardly in the interior of the trough which may be filled with a granular material such as coarse gravel. Combustion then occurs at the upper surface of the granular material.

The patent to Cunningham is cited for disclosing a lid, and Applicant agrees that the Cunningham device does have a lid.

Regarding the rejection of original independent claim 1 as anticipated by Gieb, Applicant respectfully disagrees with the Examiner. Specifically, as noted above, Gieb discloses a diffuser element that is located outside of the fire pan. Original claims' 1 and 28 recited that the diffuser element was --disposed in the pan interior ...--. However, this claim was also rejected as anticipated by Campbell. Here, Campbell's diffuser does appear to be located inside of the interior of the fire pan.

Accordingly, independent claim 1 has been amended to clearly recited that the diffuser element has an exterior surface and that the gas injector of the present invention of this claim has an outlet directed toward the diffuser such that vaporized fuel is incident on a region of the exterior surface to disperse gas exteriorly of the diffuser. As noted, the structures shown in both Gieb and Campbell teach the communication of gas to the interior of a diffuser

and directing it against an interior surface of the diffuser so that the diffuser fills with gas and then outlets the gas to the fire pan. Accordingly, independent claim 1 should now be allowable over either of Gieb or Campbell.

Independent method claim 32 has been similarly amended such that the method includes the step of directing a flow of gas toward an exterior surface of a diffuser. For the same reasons set forth above, amended claim 32 should be allowable.

Due to this Amendment, a new filing fee calculation is provided, as follows:

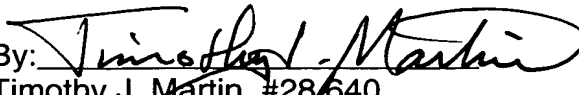
Maximum Total Claims This Amendment		Total Claims Previously Paid For	
33	-	34	= 0 x \$ 9.00 = \$
Total Independent Claims Per This Amendment		Maximum Independent Claims Previously Paid For	
6	-	4	= 2 x \$44.00 = \$88.00
Additional Filing Fee Due			\$88.00

Accordingly, our check no. 18558 in the amount of \$88.00 is enclosed. The Commissioner is hereby authorized to charge any deficiency in the payment of the required fee(s) or credit any overpayment to Deposit Account No. 13-1940.

Based on the foregoing, Applicant submits that the present application is in complete condition for allowance, and action to that end is courteously solicited. If any issues remain to be resolved prior to the granting of this application, the Examiner is requested to contact the undersigned attorney for the Applicant at the telephone number listed below.

Respectfully submitted,

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**CERTIFICATE OF MAILING UNDER 37 C.F.R. 1.8**

I hereby certify that the foregoing **AMENDMENT (16 pages) and Check No. 18558 in the amount of \$88.00** is being deposited with the United States Postal Service as first-class mail in an envelope addressed to Mail Stop Fee Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on this 28<sup>th</sup> day of October, 2004.

  
Christy L. Burbank

## **DRAWING AMENDMENTS**

Pursuant to **37 C.F.R. § 1.121(d)**, application drawing figure 4 is amended and submitted as a separate paper showing the proposed change in red for approval by the Examiner.